

1 November 1955

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*For Review
Investigation*

1 November 1955

MEMORANDUM FOR: Chief, CM

SUBJECT : Government Corporations

REFERENCES : (a) Your Memorandum dated 14 February 1955

(b) I&R Eyes Only Report, dated 29 November 1954

1. By reference (a), you requested general guidance as recommended by reference (b) in the matter of Government corporations. The latter reference suggested that you consult this office "and clearly ascertain the intent of Congress toward corporations established by the Federal Government and be guided thereby before disclosing Agency interest in any such...". We have discussed this informally with you on a number of occasions and while we are waiting for legislative developments for some indication of Congressional intent, you may desire a tentative statement for reference.

2. At the moment, there are about five bills in Congress designed to take the Government out of competition with private enterprise. Some of these restrict it to competition in the U.S. (including territories and possessions), others are comprehensive. However, all contain exceptions which would appear to be available to the Agency. These apply to commercial activity "in furtherance of national programs and objectives legally established" or which would "not adversely affect national security" or "wherever consistent with the national health and security". They seek the termination of present activities and specific approval for new ones. Some of the language may prove to be too restrictive from our standpoint unless we rely on the "notwithstanding any other provisions of law" clause of our own Act, P.L. 110. We have taken the position that this clause provides us exemption from the prohibition of the Government Corporation Control Act (P.L. 248 - 79th Congress, 1st Session) of 1945 which stipulates that "No corporation shall be created, organized, or acquired hereafter by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress or pursuant to an Act of Congress specially authorizing such action." The Legislative Counsel will continue to keep abreast of the proposed bills.


3. There is also a proposed amendment to the U.S. Constitution that the Government "shall not engage in any business, profession,

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commercial, financial, or industrial enterprise except as specified in the Constitution." Since there is no activity of this nature specifically identified in the Constitution, this would either invalidate all activity of this nature or else the amendment would be meaningless. If the amendment became effective, it might be construed as a prohibition against such activity as a direct proprietary function of the Government but not against such activity as a function which is necessary to meet the broader operational responsibilities of an agency acting under its essential charter powers when the proprietary aspect is only incidental to that aim.

/s/


Assistant General Counsel

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